IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.6763 M 2006

DATE OF DECISION: FEBRUARY 22, 2007

Parkash Kaur

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Tajender Joshi, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab.

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RANJIT SINGH, J.

Being aggrieved against the order declaring her proclaimed offender, the petitioner has filed this petition under Section 482 Cr.P.C., seeking quashing of the order and also the subsequent proceedings. The petitioner is being prosecuted for offences under Section 420 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act registered at Police Station Vigilance Bureau, Ferozepur.

The petitioner, who was earlier working as District Education Officer, retired from the said post on 31.8.2002. She is otherwise unmarried and after retirement started living at House No.58, Shastri Nagar, Near Guru Nanak Hospital, Amritsar, alone as her parents are also no more alive. It is alleged

that the petitioner, while functioning as District Education Officer, was ex-officio Member of the Managing Committee of MDAS Higher Secondary School, Moga. She, being Member of the said Committee, accepted the recommendation for the appointment of the teachers. On the basis of her role, as afore-mentioned, the petitioner has been involved in this FIR. The alleged incident is dated 20.12.2000 and 21.12.2000 but the FIR is registered on 12.5.2004. Since the petitioner had already retired with effect from 31.8.2002, efforts were made to serve her at her known address i.e. H.No.58, Shastri Nagar, Near Guru Nanak Hospital, Amritsar. The record reveals that when efforts to serve the petitioner remained unsuccessful, a proclamation was issued and SI Sikandar Singh was detailed to effect service on the petitioner in terms of provisions of Section 82 Cr.P.C. The Court, after recording the statement of SI Sikandar Singh regarding service of the petitioner, passed the impugned order, declaring her to be a proclaimed offender.

Apart from certain other submissions, learned counsel for the petitioner contends that SI Sikandar Singh admittedly had gone to effect service on the petitioner on 25.12.2004. On that day, the petitioner was not present in India as she had left for United States of America on 16.9.2004, from where she returned on 11.1.2005. The petitioner has furnished detail of her visits in the petition. As per the averment, she had again left the country on 7.6.2005 and came back on 29.11.2005. It is on this basis, it is pleaded that proclamation, which SI Sikandar Singh had gone to serve on the petitioner could not be effected as she was not present in the country. This, as per the petitioner, would not be a sufficient service in the eyes of law to

satisfy the requirement of Section 82 Cr.P.C. It is pleaded that on coming to know about the impugned order, the petitioner has filed the present petition.

While issuing notice of motion on 3.2.2006, this Court had permitted the petitioner to surrender before the trial Court on or before 10.2.2006 with a direction to the trial Court to admit her on interim bail. It is not disputed that pursuant to this order, the petitioner has appeared and surrendered before the trial Court. Mr.Berry, on instructions, has pointed out that the petitioner is regularly appearing before the trial Court.

In *Sunil Kumar vs. State,* 2002 (2) Criminal Court Cases 165, *Nirmala Devi etc. Vs. State of Himachal Pradesh,* 2003 Criminal Law Journal 3499 and *Chokha alias Pukhraj Vs. State of Rajasthan,* 2006 (1) RCR (Criminal) 496, it is held that where no attempt was made to serve summons upon the accused serving in the Army or living in foreign country, it could not be said that they evaded service and the order declaring them proclaimed offenders was termed as improper. Even on the ground that publication of proclamation had not been made by being publicly read in a conspicuous place, orders were held to be bad.

Omission to comply with all the requirements of publication prescribed by Section 82 Cr.P.C. as such, has been held to constitute a failure of justice, justifying the intervention by the High Court. It can, thus, be said that requirement of Section 82 Cr.P.C. cannot be dispensed with and where these are not followed or are shown to have not been followed, the order declaring the person as proclaimed offender cannot be sustained. In the instant case, there is

nothing on record to show or to indicate that requirements of Section 82 Cr.P.C. were complied with. The petitioner has placed sufficient material on record to show that she was not served properly in this case and accordingly the order declaring her as proclaimed offender cannot be sustained. Since the petitioner has already appeared before the trial Court and is regularly facing trial, no purpose would be achieved in allowing the order, declaring her proclaimed offender, to continue.

Accordingly, the petition is allowed and the impugned orders are quashed. It is, however, directed that the petitioner would continue to appear before the trial Court without fail.

Counsel for the petitioner points out that in view of the order declaring the petitioner as proclaimed offender, her pension was also ordered to be attached. Since the order declaring her proclaimed offender is being quashed, the petitioner will be entitled to all consequential reliefs, including in regard to the order of attachment of her pension or any other property.

February 22, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**